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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

EB DOCKET NO. 03-152

WILLIAM L. ZAWILA, et al.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	EB Docket
	No. 03-152
WILLIAM L. ZAWILA	
Permittee of FM Station KNKS, Coalinga, California	Facility ID No. 72672
AVENAL EDUCATIONAL SERVICES, INC.	
Permittee of FM Station KAAX Avenal, California	Facility ID No. 3365
CENTRAL VALLEY EDUCATIONAL SERVICES, INC.	
Permittee of FM Station KAJF, Firebaugh, California	Facility ID No. 9993
H.L. CHARLES D/B/A FORD CITY BROADCASTING	
Permittee of FM Station KZPE, Ford City, California	Facility ID No. 22030
LINDA WARE D/B/A LINDSAY BROADCASTING	
Licensee of FM Station KZPO, Lindsay, California	Facility ID No. 37725
In re Application of	
WESTERN PACIFIC BROADCASTING, INC.	File No. BR-19970804YJ
For Renewal of License for AM Station KKFO, Coalinga, California	Facility ID No. 71936

September 9, 2003

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The pre-hearing conference came to order in Room TW-A363 of the Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. at 9:30 a.m.

Before: THE HONORABLE ARTHUR I. STEINBERG

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APPEARANCES.

On Behalf of William Zawila; Avenal Educational Services, Inc.; Central Valley Educational Services, Inc.; H.L. Charles D/B/A Ford City Broadcasting; Linda Ware D/B/A Lindsay Broadcasting; and Western Pacific Broadcasting, Inc.:

SHELLEY SADOWSKY, Esq.
of: KWZ Rosenman
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(202) 625-3719

On Behalf of the Chief Enforcement Bureau,
Federal Communications Commission:

JAMES W. SHOOK, Esq.;
DAVID M. JANAS, Esq.; and
WILLIAM FREEDMAN, Esq.
of: Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
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ALSO PRESENT:

HARRY F. COLE, Esq.
SUSAN A. MARSHALL, Esq.

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Hearing Began: 9:40 a.m.
Hearing Ended: 10:25 a.m.

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:40 a.m.)

3 JUDGE STEINBERG: We're on the record.

4 This is a pre-hearing conference in EB Docket Number
5 03-152, which was designated the hearing by order to
6 show cause, notice of opportunity for hearing, and
7 hearing designation order FCC03-158, released July 16,
8 2003.

9 Twenty-five separate issues were specified
10 for the hearing. Without going into the details, the
11 issues seek to inquire into whether William L. Zawila
12 -- that's Z-A-W-I-L-A -- misrepresented facts to or
13 lacked candor with the Commission, whether Mr. Zawila
14 and/or others assumed control over the real parties
15 and interests in certain stations and applications,
16 whether Mr. Zawila and/or others operated certain
17 stations substantially at variance from the terms of
18 their authorizations, and whether Mr. Zawila and/or
19 others committed other legal and technical violations
20 of the Commission's rules.

21 Ultimately the issues require a
22 determination as to whether certain authorizations

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1 should be revoked and whether a license renewal
2 application should be denied.

3 In addition, the order to show cause
4 authorized the imposition of a forfeiture on Mr.
5 Zawila and/or the permittees and licensees involved in
6 this proceeding.

7 By order FCC03M-28, released July 21,
8 2003, the chief administrative law judge assigned this
9 case to me and scheduled the initial pre-hearing
10 conference for this morning.

11 Let me first take the appearances for the
12 parties. For William L. Zawila?

13 MS. SADOWSKY: Shelley Sadowsky, Katten
14 Muchin Zavis Rosenman.

15 JUDGE STEINBERG: For Avenal Educational
16 Services, Incorporated?

17 MS. SADOWSKY: Shelley Sadowsky.

18 JUDGE STEINBERG: For Central Valley
19 Educational Services, Incorporated?

20 MS. SADOWSKY: Shelley Sadowsky.

21 JUDGE STEINBERG: For H.L. Charles, doing
22 business as Ford City Broadcasting?

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1 MS SADOWSKY: Shelley Sadowsky.

2 JUDGE STEINBERG: For Linda Ware, doing
3 business as Lindsay Broadcasting?

4 MS. SADOWSKY: Shelley Sadowsky.

5 JUDGE STEINBERG: And for Western Pacific
6 Broadcasting, Incorporated?

7 MS. SADOWSKY: Shelley Sadowsky.

8 JUDGE STEINBERG: For the Chief
9 Enforcement Bureau, Federal Communications Commission?

10 MR. SHOOK: James Shook.

11 MR. JANAS: And David Janas.

12 JUDGE STEINBERG: Let me go through the
13 pending pleadings. I have a couple of pleadings
14 pending. One is a petition for leave to intervene
15 filed on August 27, 2003 by Richard B. Smith. Mr.
16 Smith is represented by Vincent Curtis, Jr.; Harry F.
17 Cole; and Susan A. Marshall.

18 Mr. Cole and Ms. Marshall are in the
19 hearing room this morning, but since they're not
20 parties to this proceeding, I am not going to ask them
21 to enter an appearance. But I would like to note that
22 they're here today.

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1 MR. COLE. Thank you, Your Honor,

2 JUDGE STEINBERG: Maybe I will let you
3 talk later, maybe I won't.

4 MR. COLE: We would appreciate the
5 opportunity.

6 JUDGE STEINBERG: Okay. The second thing
7 I have was filed yesterday, September 8, 2003, by Mr.
8 Zawila, et al. And it's a motion for extension of
9 time within which to respond to the petition for leave
10 to intervene. Mr. Zawila requests that the time be
11 extended with which to file an opposition to the
12 petition, which would extend it to September 10th. Is
13 that correct, Ms. Sadowsky?

14 MS. SADOWSKY: That is correct, Your
15 Honor.

16 JUDGE STEINBERG: Is there any objection
17 to a granting of the motion? Mr. Cole?

18 MR. COLE: Not on behalf of Richard Smith,
19 Your Honor

20 JUDGE STEINBERG: Okay. Mr. Shook?

21 MR. SHOOK: No, Your Honor.

22 JUDGE STEINBERG: The extension and

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1 appellant request is granted. The responses to the
2 petition for leave to intervene will be due September
3 10th. And that goes for the bureau's response also.

4 MS. SADOWSKY: Thank you, Your Honor.

5 JUDGE STEINBERG: Also pending are five
6 sets of requests, requests for admission of facts,
7 filed on September 4th by the Enforcement Bureau. I
8 will just note that because I like to review what is
9 pending because sometimes I don't have everything. Is
10 there anything else that anybody else knows of that's
11 pending?

12 MR. SHOOK: Not yet.

13 JUDGE STEINBERG: When Mr. Zawila entered
14 a notice of appearance on behalf of himself and the
15 other permittees and licensees, a couple of weeks ago,
16 he filed a request for continuance of the pre-hearing
17 date, it was denied.

18 And in that request, he referred to a
19 distress sale, possibility of selling I guess the
20 permits and the stations through a distress sale. And
21 I wondered if Ms. Sadowsky would address that.

22 MS. SADOWSKY: Yes, Your Honor. The

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1 parties are pursuing with all seriousness the sale of
2 these stations pursuant to the commission's distress
3 sale policy. They have been in contact with counsel
4 for qualified minority-controlled entities who have
5 expressed interest. We are now also pursuing
6 obtaining appraisals of the properties for purposes of
7 pursuing the distress sale.

8 JUDGE STEINBERG: Okay. I went back in my
9 old files and looked up some of the ancient distress
10 sale cases. Generally what happened was if a party
11 elected to pursue a distress sale or explore a
12 distress sale, generally the proceeding was stayed for
13 a period of time to allow the party to do that and
14 file -- once they found purchasers, and I guess most
15 found purchasers -- to prepare the motion for petition
16 for extraordinary relief and then get that to relevant
17 decision-makers, which in a distress sale,
18 fortunately, is not me.

19 I wondered if we could do that in this
20 instance here, if we could just basically put the
21 proceeding on hold. At least traditionally, at least
22 the best I could determine, generally the proceeding

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1 would be stayed for five months. So what I would
2 propose is basically staying the proceeding until
3 February 9, 2004

4 Some judges would say, "Okay. Let's
5 continue to do discovery, so that if the distress sale
6 falls through or they don't find purchasers, then we
7 can be ready to crank up and expedite the hearing."

8 Some said, "Let's put everything on hold
9 because it doesn't make any sense spending the
10 Bureau's time and money and the private parties' time
11 and money doing what would ultimately become a useless
12 act."

13 I think I am going to kind of split the
14 baby. I would propose that we stay discovery to the
15 extent of answering the requests for admissions of
16 fact. If the Bureau wants to file or if Ms. Sadowsky
17 wants to file discovery directed to the Bureau, what
18 I am saying is you can file discovery requests during
19 the stay period to get them filed, but you don't have
20 to answer them until after February 9th.

21 But to sort of split the baby, I want to
22 propose that any of the discovery requests that were

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1 filed during the stay period, the responses be due on
2 February 23. In other words, you can file stuff but
3 really not have to do anything until the end of the
4 period if there is going to be no distress sale.

5 And I would expect, as an officer of the
6 court, if there isn't going to be a distress sale or
7 things fall through, that Ms. Sadowsky notify
8 everybody promptly so that maybe we can crank up
9 again. Does that make any sense, Mr. Shook?

10 I mean, you could be moving on your
11 discovery, and you can request documents. And you can
12 ask interrogatories. And you've got the admission
13 requests out. But Ms. Sadowsky doesn't have to waste
14 her time and her clients' money responding to it until
15 she knows there's not going to be a distress sale.

16 And Ms. Sadowsky can do whatever
17 discovery, file any discovery that she wants to put on
18 the Bureau. But you don't have to do anything until
19 she notifies you that there is not going to be a
20 distress sale.

21 February 23rd gives everybody a couple of
22 weeks. It just seems to make sense to me that you can

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1 be doing something more useful than spinning your
2 wheels on a case that may never go to hearing. And if
3 it turns out February 23rd is not a good day or there
4 are just massive amounts of things, then we can
5 revisit that later.

6 MR. SHOOK: Your Honor, there are two
7 aspects. First, with respect to the renewal
8 applicant, it is the Bureau's understanding from the
9 allegations that appear in the HDO that there is a
10 possibility, perhaps a very reasonable possibility,
11 that that station's license should be forfeited
12 pursuant to 47 USC Section 312(g). In that sense --

13 JUDGE STEINBERG: That's the 12-month
14 thing?

15 MR. SHOOK: Yes, sir. And in that sense,
16 we have admissions requests relative to that station
17 that we are prepared to file tomorrow and would like
18 to get responses to. We would also like to get
19 responses to the admissions requests that we have
20 already filed.

21 That gets me to the second aspect of what
22 I was going to say. And that is that while we

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1 certainly understand from the motions that Mr. Zawila
2 himself has filed and from Ms. Sadowsky's
3 representation this morning that there is a desire to
4 pursue distress sale relief and that some steps are
5 being taken toward that end, that until we actually
6 get in hand a petition for extraordinary relief which
7 details where they are and that they have done
8 something more than simply chat up a few people about
9 certain things, the Bureau would not sign on to a stay
10 at this point

11 JUDGE STEINBERG: Well, I am going to
12 provide for status reports and detailed status reports
13 so that we both can be kept apprised of what is going
14 on.

15 My problem is I just think if there is
16 going to be a distress sale, it is a waste of time and
17 money to do the amount of work that it requires to do
18 discovery. And I think the time could be spent more
19 fruitfully doing things that are more useful.

20 MR. SHOOK: Your Honor, it has been
21 brought to my attention --

22 JUDGE STEINBERG: Yes?

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1 MR. SHOOK: Excuse me.

2 JUDGE STEINBERG: Sure.

3 MR. SHOOK: There was one other aspect
4 that I forgot to mention, and perhaps this should be
5 factored in here, and that is the processing freeze
6 that is apparently now in place relative to assignment
7 applications. And so long as that freeze is there, it
8 seems to me that no application, no assignment
9 application, whether it involves a distress sale or
10 whether it involves any other run-of-the-mill
11 assignment, is going to be processed by the Media
12 Bureau.

13 And so to that extent, we really can't get
14 anywhere with distress sale --

15 JUDGE STEINBERG: Why should you hold
16 everything up because of something none of us in this
17 room -- I mean, that could go on for three years. Ms.
18 Sadowsky could have a purchaser today and file her
19 papers today. And you would say, "Let's go through
20 discovery and go to a hearing because nobody can look
21 at the papers." There might be court suits
22 challenging the freeze. I mean, I'm not going to

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1 editorialize.

2 MR. SHOOK: No. It's just one of these
3 things where I think that should be factored into Your
4 Honor's thinking and decision, because if it turns out
5 that this freeze holds, what we have, really, is an
6 indefinite stay.

7 And in the meantime, Mr. Zawila, who has
8 been accused of a vast number of things, continues to
9 operate at stations, at least one of which perhaps the
10 license should be cancelled.

11 JUDGE STEINBERG: Well, if the license
12 should be cancelled, maybe you should just go ahead
13 and cancel it.

14 MR. SHOOK: Well, we are in the hearing
15 setting now.

16 JUDGE STEINBERG: That is what has been
17 done in the past? Well, anyway, no. It has been done
18 in the past through the hearing setting.

19 MR. SHOOK: Now the problem has been
20 dropped into your lap.

21 JUDGE STEINBERG: Yes. Let me hear from
22 Ms. Sadowsky.

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1 MS. SADOWSKY: Your Honor, I think your
2 proposal is reasonable. It would be more useful for
3 us to spend our time focusing on the distress sale
4 aspects, as opposed to answering discovery matters.

5 Quite frankly, I don't think the freeze
6 really should have any bearing on this question. If
7 you were to stay the discovery with the understanding
8 that if the distress sale doesn't go forward and
9 require us to provide regular updates on our progress
10 toward the distress sale, it seems to me that come
11 February 23rd, if we haven't filed our petition for
12 extraordinary relief by February 9th, we will have
13 achieved what you would otherwise have set for dates
14 within the next -- I don't know how much time you
15 would give us for discovery in any event.

16 But I don't think we're losing that much
17 time --

18 JUDGE STEINBERG: I've got a schedule
19 planned.

20 MS. SADOWSKY: I do think it would be
21 beneficial to both the Commission and our clients to
22 not have to waste their resources on discovery that

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1 may not be necessary.

2 JUDGE STEINBERG: Mr. Cole is chomping at
3 the bit So I am going to use my discretion and let
4 him release all of --

5 MR. COLE: Thank you, Your Honor. I
6 appreciate that.

7 As a preliminary matter, I think there is
8 an important question of law which Your Honor is
9 assuming, which I think you are making the wrong
10 assumption. That is that the distress sale still
11 exists.

12 JUDGE STEINBERG: I don't want to get into
13 that. I really don't want to get into that.

14 MR. COLE: But you can't avoid that if you
15 -

16 JUDGE STEINBERG: Oh, yes, I can.

17 MR. COLE: -- if you are staying the
18 proceeding because of a distress sale policy which is
19 unconstitutional and has been so held.

20 JUDGE STEINBERG: Okay. I tried to do a
21 little research on it. Basically the decision as to
22 a distress sale, as to if a proposal for a distress

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1 sale is made, I don't rule on it, thank the Lord.
2 That goes to, what, the Media Bureau to delegate. It
3 goes to somebody to delegate authority.

4 MR. SHOOK: In this case, it would go to
5 the Media Bureau.

6 JUDGE STEINBERG: Okay. To delegate
7 authority. I am going to let them deal with it, and
8 I am not going to deal with it. If the parties want
9 to pursue it, I will let them pursue it and let
10 somebody else have the responsibility for ruling on
11 that. I don't have it, and I don't want it.

12 So I am just assuming that, for purposes
13 of this proceeding, they can elect to do the distress
14 sale. Let somebody else rule on it as well.

15 MR. COLE: But you're ruling on it by
16 making that assumption.

17 JUDGE STEINBERG: Well, that's fine.

18 MR. COLE: You're making a threshold
19 assumption which delays this proceeding for at least
20 five months according to your schedule right now. And
21 that is assuming there is no slippage on the back end.

22 And my experience is there tends to be

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1 slipperage on the back end, no matter --

2 MS. SADOWSKY: Your Honor?

3 JUDGE STEINBERG: I'm willing to do it.
4 And to the extent that I am making a preliminary
5 ruling, if it's wrong, somebody will correct me down
6 the road. But this is the way I am going to pursue
7 this. I know your argument, and I don't want to
8 address it.

9 MR. COLE: It's a matter of
10 constitutionality, Your Honor.

11 JUDGE STEINBERG: Let the Media Bureau
12 handle it. And then you can maybe file a brief at the
13 time.

14 Was there anything else?

15 MR. COLE: The only other thing I would
16 have to say is that stretching this out until February
17 is fairly generous given the fact that the hearing
18 designation order was issued two months ago.

19 The party applicants and licensees have
20 been on notice for two months already of the issues
21 that the Commission has. Had they been interested in
22 pursuing a distress sale, they certainly have had a

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1 two-month head start already. Giving them an
2 additional five months drags this out for seven
3 months.

4 JUDGE STEINBERG: Well, that's fine. I
5 presume from what Ms. Sadowsky said, steps have been
6 taken.

7 MS. SADOWSKY: Yes, Your Honor.

8 JUDGE STEINBERG: So maybe it hasn't been
9 a wasted two months.

10 I think what I am going to do is maybe
11 split the split baby and say that you can pursue
12 discovery with respect to -- is station KKFO the one
13 that you are talking about?

14 MR. SHOOK: That's the renewal applicant,
15 yes.

16 JUDGE STEINBERG: You can pursue discovery
17 with respect to station KKFO on the question of
18 whether they not broadcast for 12 continuous months.
19 Is that the --

20 MR. SHOOK: Right. Well, Your Honor, we
21 would also request that, at the least, the admissions
22 request that we had made be answered so that we're in

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1 a position to move quickly in the event that when
2 February rolls around, that we're still in the same
3 situation or position that we're in now.

4 JUDGE STEINBERG: Would you have any
5 problem with that?

6 MS. SADOWSKY: Yes, Your Honor, I would.
7 We have five sets of requests for admissions and
8 apparently something else coming down the pike with
9 respect to KKFO.

10 JUDGE STEINBERG: Yes, sixth set.

11 MS. SADOWSKY: So just dealing with those
12 would require a substantial amount of time. And,
13 frankly, I don't think the Bureau would be prejudiced
14 if it received the information after we come to a
15 conclusion that a distress sale may not be possible.
16 I don't think that by having these admissions answered
17 on February 23rd, or received by February 23rd, that
18 the Bureau would be that further behind.

19 Essentially these requests are asking us
20 to admit everything that is alleged in the HDO.

21 JUDGE STEINBERG: Well, yes, I kind of
22 noticed that.

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1 MR. SHOOK: We tried to be thorough, Your
2 Honor, but the point is that one of the points here is
3 that should we delay to February and nothing
4 definitive has happened, perhaps because of the
5 freeze, perhaps for some other reason, we are
6 stretching out and perhaps losing evidence to the
7 extent that memories fade, documents seem to
8 disappear, people die.

9 We want the admissions answers relatively
10 quickly so that we have a basis for going forward in
11 the event the stay is lifted, for whatever reason, as
12 opposed to finding out five months from now, seven
13 months from now, God knows how many months from now,
14 when the proceeding kicks back in, that Mr. Zawila, et
15 al., are not in a position to answer those admissions
16 because of things that have taken place in the
17 interim.

18 They're in a position to answer these
19 admissions now. They should be required to answer
20 them now, not five, seven, ten months from now.

21 JUDGE STEINBERG: Okay. Let me hear from
22 Ms. Sadowsky, please.

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1 MS. SADOWSKY: Your Honor, I would
2 reiterate that it would be an extreme, onerous burden
3 for these six parties to engage in answering discovery
4 when they would like to pursue, they made it clear
5 they want to pursue a distress sale.

6 It seems to me that your proposal as
7 initially stated is one that is eminently reasonable
8 and is not unfair to the Bureau in any stretch of the
9 imagination and that we will not be causing
10 substantial delay by going with the proposal that you
11 suggested originally.

12 JUDGE STEINBERG: Well, I think I should
13 use my sense of humor and say just answer all the odd-
14 numbered admissions requests and not the even-numbered
15 ones, but that would be too flip.

16 I think Mr. Shook persuaded me. Let's
17 answer the admissions requests. And then that will be
18 it until the end of February -- not the end of
19 February, but if anybody wants to file additional
20 requests, including the one, KKFO -- that is going to
21 be filed shortly, you said?

22 MR. SHOOK: Right. And we need to give

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1 notice now. That is going to be far more extensive
2 than the others because if you --

3 JUDGE STEINBERG: Yes. I know.

4 MR. SHOOK: -- have read the HDO, you will
5 notice that there are a lot more allegations
6 pertaining to that station than there are --

7 JUDGE STEINBERG: Yes. Why don't we just
8 get finished with the admissions requests and then
9 from that point on, then discovery is stayed until
10 February 9th And then if there is anything filed
11 before then, then the due date will be February 23rd.

12 That way I guess the Bureau can get its
13 answers. And then if they want to file additional
14 discovery and interrogatories, or notice people for
15 depositions and stuff like that, they can do it. And
16 then everything will be in place by the end of
17 February to pursue.

18 I think I am persuaded by Mr. Shook's
19 presentation about that things won't ever be fresher
20 in their minds than they are today, in the
21 respondents' minds.

22 MS. SADOWSKY: Your Honor, I might note

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1 that each of the requests for admissions asks that
2 they be answered within ten days of service. We will
3 need more time than that provided.

4 JUDGE STEINBERG: Why don't you and Mr.
5 Shook work that out? If you can't work it out, then
6 come to me for a ruling. I'm sure you can work it
7 out, because they are rather extensive.

8 MR. SHOOK: We can be reasonable about
9 that.

10 JUDGE STEINBERG: Okay. Now, on discovery
11 -- okay. I've covered that. I just want to make a
12 general statement. And that is if we do get into
13 wholesale discovery, I want everybody to make a good-
14 faith attempt to work out your differences among
15 yourselves, or between yourselves, depending.

16 A serious and genuine effort should be
17 made to reach a compromise with each other. Don't
18 come to me for a ruling on a discovery matter without
19 first trying to reach an agreement.

20 If there is a complete inability to
21 compromise or reach any kind of accommodation, then
22 come to me. In this connection, any request for a

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1 ruling on a discovery matter has to include a
2 certification that counsel for the parties involved
3 made a good-faith attempt to resolve the dispute but
4 couldn't do so.

5 I want status reports on the distress sale
6 possibility or the progress -- and I want them to be
7 fairly detailed -- to be filed by the permittees,
8 licensees on November 10, 2003; January 9, 2004; and
9 then February 9, 2004

10 It basically gives you two months. If
11 somebody thinks we should have more frequent reports,
12 let me know. Is that sufficient, do you think, Mr.
13 Shook?

14 MR. SHOOK: That is sufficient.

15 MR. COLE: My own thought, Your Honor,
16 would be, at a minimum, we should have a written
17 status report now as to the precise nature of the
18 efforts that have been made and the time of those
19 efforts, we can get a start date for when things have
20 started to happen, and then go from there.

21 Now, whether or not November is adequate,
22 I leave it to Your Honor to decide. It does seem to

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1 me to afford at this point another two months, again,
2 they have had two months already to start the process.

3 And theoretically we have a fairly
4 motivated seller here. If the stations or the
5 facilities that you think you may have available for
6 sale are attractive, presumably there should be a
7 number of buyers out there. So it shouldn't take that
8 long to identify and get the process moving, to
9 identify a buyer.

10 But I guess my immediate thought would be
11 to have an initial status report right now.

12 JUDGE STEINBERG: Well, I'm satisfied with
13 Ms. Sadowsky's representation as to what has been
14 going on. I will just leave the status reports.

15 You can report more frequently if
16 something significant comes up, you know, "We found a
17 buyer for this station and wanted to let you know
18 early." You know, that would be nice, a nice
19 surprise. You can put it in with your Thanksgiving
20 cards.

21 Before we set a schedule, let me just talk
22 about the courtesy copies of pleadings. For some

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1 reason, the mail system between the secretary's office
2 and the Office of the Administrative Law Judges seems
3 to have broken down. Many times we don't receive
4 copies of pleadings, the letters, or other things that
5 have been filed.

6 So I would ask the parties, counsel for
7 the parties, to provide me with courtesy copies of all
8 the pleadings and letters, et cetera, that you want me
9 to see. Obviously if it's a pleading and I have to
10 rule on it, it helps if I see it.

11 The Bureau usually on the day of filing
12 has somebody hand-deliver a copy, a stamped copy, of
13 the pleading to me. And that is great. If you could
14 continue to do that, that would be greatly
15 appreciated. Counsel for Mr. Zawila and counsel for
16 Mr. Smith, if they become parties, if they could fax
17 me courtesy copies of whatever they file after they
18 have been stamped in so I can see the secretary's
19 stamp or some other stamp on it, that might be the
20 only copy I have with a stamp on it.

21 And, of course, things don't appear in the
22 electronic comment filing, ACFS, electronic comment

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1 filing system. First, if they appear at all, they
2 don't appear promptly. And I really can't rely on it,
3 although I do go there, not in this case but in other
4 cases. I discover things that I never knew existed.

5 So it would be helpful if you could fax me
6 stuff with stamped copies of stuff. If it comes a day
7 or two later, fine. I don't care.

8 Let's go off the record, and I'll give you
9 my proposed schedule.

10 (Whereupon, the foregoing matter went off
11 the record at 10:10 a.m. and went back on
12 the record at 10:17 a.m.)

13 JUDGE STEINBERG: We're back on the
14 record. While we were off the record, we agreed on
15 the following procedural dates. I am not going to
16 repeat the dates for the status reports, but that will
17 be part of the procedural schedule.

18 February 23, 2004 will be the date for the
19 responses to any outstanding or pending discovery
20 requests which were filed during the course of the
21 stay.

22 I will point out that just because

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1 February 23rd is the last date that these responses
2 can be filed doesn't mean they can't be filed earlier
3 or in due course. I pointed out that if counsel for
4 the permittees and licensees perceive that there is
5 not going to be a distress sale, then I would expect
6 a good-faith effort be made to get the discovery
7 responses in as quickly as possible; before February
8 23rd, if that is possible.

9 April 12, 2004 will be the date for
10 completion of all discovery. And completion means
11 that everything is scheduled to end on that date. It
12 does not mean that the final request is filed on that
13 date.

14 May 3, 2004 will be a date for the
15 exchange of direct case exhibits; stipulations, if
16 any; and the list of witnesses, if any, to be called
17 for oral testimony. And all of them have to be
18 received by everybody and by myself on that date.
19 It's not a matter of putting them in the mail. That's
20 the actual receipt date.

21 And then there will be a footnote in my
22 order as to how I like the exhibits. And if there are

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1 any questions about how I like exhibits to be done,
2 just call me and ask me.

3 The important thing is that if you have a
4 cover sheet on an exhibit, except for the cover sheet,
5 every page within the exhibit have a number on it.
6 You start with number one, and then you end with the
7 number, whatever the last page is. The next exhibit,
8 you start with number one, even if you have to write
9 them by hand and put them in little circles so that if
10 we go to the hearing, just turn to page 12,
11 everybody's got the same page 12.

12 The next date is May 10, 2004, the date
13 for notification of witnesses desired for
14 cross-examination. And the hearing will commence at
15 9:00 a.m. in probably this room in Washington, D.C. on
16 May 17, 2004.

17 Okay. Do you have any problem with the
18 dates, Mr. Shook?

19 MR. SHOOK: No, Your Honor.

20 JUDGE STEINBERG: Ms. Sadowsky?

21 MS. SADOWSKY: No, Your Honor.

22 JUDGE STEINBERG: And Mr. Cole?

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1 MR. COLE: No, Your Honor.

2 JUDGE STEINBERG: Okay. Any --

3 MR. SHOOK: Your Honor, I do have one
4 other matter to bring up, and that is one of the
5 possibilities that flows from accurate admissions
6 responses would be a summary decision motion, which
7 would be certainly helpful to the Bureau in the sense
8 that if it were properly framed and granted, that
9 would reduce the number of issues that would have to
10 be addressed during the hearing itself to make all of
11 our lives much, much easier.

12 Would it be Your Honor's intention, should
13 such a motion be prepared and filed, to delay ruling
14 on that until this February period has passed? And
15 so, instead of a discovery response being due on the
16 23rd -- and I guess the 9th is supposed to be the
17 magic date in terms of whether or not the distress
18 sale process actually gets off the ground.

19 If we're not at that point by February
20 9th, we have our motion on file at that point, that
21 time would start to run for a response for Mr. Zawila,
22 et al So that Your Honor would be in a position to

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1 rule on that perhaps as early as late February.

2 JUDGE STEINBERG: Yes, I think that's --
3 gee, I never thought about the motion for summary
4 decision aspect of it. Yes, that's reasonable. If
5 you want to file a request for summary decision, then
6 the due date would be calculated from whenever we find
7 out -- if there's no distress sale, we will find out
8 from the date we find out there is no distress sale or
9 February 9th or if you want to respond early, you can
10 respond early. What is it, two weeks, a summary
11 decision for an opposition?

12 MR. SHOOK: It's either 10 days or 14
13 days. I don't have it off the top of my head right
14 now.

15 JUDGE STEINBERG: That seems reasonable.

16 MS. SADOWSKY. Your Honor?

17 JUDGE STEINBERG: Yes?

18 MS. SADOWSKY. May I just ask a question
19 or make a comment with respect to the magic date of
20 February 9? I understand you are staying the
21 proceeding through February 9th for purposes of our
22 allowing my clients to pursue a distress sale, but as

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1 I understand the Commission's distress sale policy, if
2 a distress sale is achieved prior to the hearing date
3 at any time, for instance, there could be a
4 possibility that even if we miss February 9th, that
5 down the road before May 17th, we might file a
6 petition for extraordinary relief at that time. And
7 it would still be permissible under the Commission's
8 policy.

9 JUDGE STEINBERG: I found some cases in my
10 files which said that that wasn't -- I'm trying to
11 remember -- that you can't come in like the morning
12 before the hearing and say, "Okay. Here is the
13 extraordinary relief," that there was some limitation
14 to that. But I can't remember the details.

15 My intention, frankly, is that the
16 petition for extraordinary relief be filed on or
17 before February 9th. To this extent, I agree with Mr.
18 Cole 100 percent that if you can't put together a
19 distress sale and all the papers to accommodate it in
20 seven months, it's fish or cut bait.

21 I mean, I am trying to be as reasonable as
22 I can, realizing that there might be difficulties in

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1 finding buyers for this number of stations or it might
2 be easy.

3 MS. SADOWSKY: I understand.

4 JUDGE STEINBERG: My intention -- and
5 maybe I didn't make it clear, and I'm sure I didn't
6 make it clear that -- my intention in setting the
7 February 9th date was that that's the date that I
8 ordered, and that's the date that it's supposed to be
9 filed.

10 I'm not suggesting that you cannot come to
11 me and say, "This is commission precedent. I can do
12 this." Then I would have to rule on that. But my
13 intention sitting here today is that February 9th date
14 is sort of a drop-dead date and not just that you come
15 in with a final status report saying, "We have agreed
16 to everything, but February 9th is extraordinary
17 relief, petition for extraordinary relief, filing
18 date."

19 I mean, it has given you seven months.

20 MS. SADOWSKY: Thank you, Your Honor.

21 JUDGE STEINBERG: And I wanted to give you
22 a lot of time. Okay. I think that clarifies it.

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1 Anything else we have to talk about today?

2 MR. SHOOK: Nothing, Your Honor, nothing
3 on our agenda anyway.

4 JUDGE STEINBERG: Ms. Sadowsky?

5 MS. SADOWSKY: No, Your Honor.

6 JUDGE STEINBERG: Mr. Cole?

7 MR. COLE: Nothing, Your Honor. Thank
8 you.

9 JUDGE STEINBERG: Okay. If anybody needs
10 a conference for anything, please let me know. And if
11 I can't talk you out of it, I will schedule a
12 conference.

13 And it was great seeing everybody here
14 today. This is my social activity for the week,
15 unfortunately. Okay. We'll go off the record.

16 (Whereupon, at 10:25 a.m., the foregoing
17 matter was adjourned.)

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Page of Hearing

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